



Department of  
**Seniors, Disability Services and  
Aboriginal and Torres Strait  
Islander Partnerships**

Our reference: 01577-2021

Your reference: A663145

30 March 2021

Ms Corrine McMillan MP  
Chair  
Community Support and Services Committee  
Parliament House  
George Street  
Brisbane Qld 4000

Dear Ms McMillan

Thank you for your letter seeking a response from the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships regarding explanatory notes for the Disability Services and Other Legislation (Worker Screening) Amendment Regulation 2021 (SL No. 2) (the Amendment Regulation).

The Amendment Regulation forms part of the suite of legislative measures implemented to support implementation in Queensland of nationally consistent worker screening under the National Disability Insurance Scheme (NDIS). This includes prescribing the requirement, under section 65 of the *Disability Services Act 2006* (DSA), that a person must live or work, or propose to live or work, in Queensland to be able to make an NDIS worker screening application (the nexus requirement). The explanatory notes outline that the nexus requirement may constitute a potential breach of the fundamental legislative principle (FLP) that subordinate legislation have sufficient regard to the institution of Parliament, and justification for that breach. I note the Committee's concern regarding this justification.

As outlined in the explanatory notes, the primary justification for the potential breach is that the nexus requirement simply makes explicit that the legislative measures implementing NDIS worker screening in Queensland are intended to have the same territorial application as normally appertains to Queensland laws. To this end, the explanatory notes reference section 35(1)(b) of the *Acts Interpretation Act 1954*, which provides that a reference to a locality, jurisdiction or other thing is a reference to such a locality, jurisdiction or other thing in and of Queensland. Accordingly, the nexus requirement clarifies that the ability to make an NDIS worker screening application under the DSA is only available to a person who has a requisite connection with Queensland.

Given the national context of the NDIS and the fact that jurisdictions have a discretion to include a nexus requirement in their legislation implementing NDIS worker screening, this approach puts beyond doubt the intended operation of NDIS worker screening in Queensland. The inclusion of a nexus requirement does not prevent an NDIS clearance or exclusion issued under the DSA from being portable across jurisdictions, nor a clearance or exclusion issued in another jurisdiction being recognised in Queensland.

1 William Street Brisbane  
PO Box 15397 City East  
Queensland 4002 Australia

**Telephone: +61 7 3003 6451**  
**[www.datsip.qld.gov.au](http://www.datsip.qld.gov.au)**


ABN: 25 791 185 155

I agree with the Committee's position that departments should not rely on the fact that legislation is subject to scrutiny by a Parliamentary Committee and (in the case of subordinate legislation) disallowance by Parliament to justify FLP breaches. In the case of the explanatory notes for the Amendment Regulation, the reference to scrutiny and disallowance is intended to note that this additional procedural safeguard exists. However, the Committee feedback on this issue is noted and appreciated and the department will ensure no reference of this nature is included in future explanatory notes.

I would like to reassure the Committee that the department is absolutely committed to producing explanatory notes which are clear and cogent, and which comply fully with the requirements of the *Legislative Standards Act 1992*. In response to your correspondence, I will reinforce for my senior executive staff our statutory obligations with respect to adequately assessing and justifying potential FLP breaches and ask all officers to ensure compliance, including adequate consideration of the Queensland Legislation Handbook and the Office of the Queensland Parliamentary Counsel's *Principles of good legislation: OQPC guide to FLPs*, when preparing explanatory notes in the future.

Thank you and the members of the Committee again for your correspondence. If you require further information, I encourage you to contact Ms Elizabeth Bianchi, Executive Director, Strategic Policy and Legislation, Seniors and Disability Services, on [REDACTED] or by email at [REDACTED].

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Chris Sarra', with a stylized flourish at the end.

Dr Chris Sarra  
**Director-General**